

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.3946 OF 2004

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ORAL ORDER:

The petitioners claim to be the members of the 7th respondent-Praga Tools Employees Co-operative Housing Society Limited, Kawadiguda, Secunderabad. The term of the elected Managing Committee expired on 16.04.2002, and thereafter, the affairs of the Society were being managed by the Official-Person-in-Charge, appointed under Section 32 (7) of the Andhra Pradesh Co-operative Societies Act, 1964 (for short "the Act"). In compliance with the orders of this Court in W.P.No.6605 of 2003, the 2nd respondent decided to conduct elections to the Managing Committee of the Society, and accordingly, by order dated 25.12.2004 passed by the District Collector-cum-Election Authority, an Election Officer was appointed, under Rule 22 (2)(a)(b) of the Andhra Pradesh Co-operative Societies Rules, 1964, fixing the date of poll as 24.02.2005. The election schedule was issued by the Election Officer, according to which, nominations were required to be filed on 16.02.2005, the scrutiny was on 17.02.2005, and the polling was scheduled to take place on 24.02.2005. It is stated that 17 nominations were received for the elections to the members of the Managing Committee and after scrutiny of the nominations, the list of valid nominations was also published. At that stage, the 1st respondent issued memo dated 17.02.2005 staying the elections to the 7th respondent-society and the same was informed by the 6th respondent - Election Officer vide notice dated 18.02.2005 to all the members of the Society. The said memo issued by the 1st respondent dated 17.02.2005 as well as the consequential notice dated 18.02.2005 are under challenge in this writ petition, contending *inter alia*, that the said action of the respondents is arbitrary, illegal and without jurisdiction.

A perusal of the impugned memo dated 17.02.2005 shows that the 8th respondent herein, who is the former President of the 6th respondent-society, made a representation before the Government of Andhra Pradesh and on the basis of the same, the 1st respondent while directing the 2nd respondent to send a detailed representation in the matter with regard to the allegations made in the

representation, stayed the elections scheduled to be held on 24.02.2005. The petitioners allege that the impugned order granting stay of elections was passed due to political pressure at the instance of the 8th respondent and that the 1st respondent has no power or authority to interdict the election process.

On behalf of the respondents, the 5th respondent-Deputy Registrar filed a counter-affidavit in which the fact that the impugned order was passed by the 1st respondent on the basis of the representation given by the 8th respondent has not been disputed. It is further stated that in the representation it was alleged by the 8th respondent that the procedure adopted for conducting elections to the 6th respondent-society was not in accordance with law, and in the circumstances, the 1st respondent stayed the elections in the larger interest of the members of the Society. It was also alleged by the 8th respondent in his representation that the Ex-Secretary admitted 50 members illegally and misappropriated funds of the Society and that the Election Officer did not publish the voters' list and no identity cards were issued, no communication was sent to the members about the election and it was not displayed on the Notice Board of the Society.

I have heard the learned counsel for both the parties and perused the material on record.

Having regard to the facts and circumstances, the only question that arises for consideration in this writ petition is, whether it is permissible to stay the elections on any of the allegations made by the 8th respondent in his representation.

An identical question has been considered by this Court in W.P.No.2678 and by order dated 1.02.2006, it was held that the only provision that is available for postponing the elections is Rule 22 (c) of the A.P. Co-operative Societies Rules, 1964, and even the power conferred on the Government under Section 131 of the Act to give directions cannot be extended to interdict the election process on the grounds other than that are mentioned under Rule 22 (c) of the Rules. Having considered all the relevant statutory provisions, it was concluded that even assuming that there were certain irregularities in enrolment of the members of the Society and preparation of the voters' lists as alleged by the respondents 4 to 7 therein, the same can at the most be a valid ground to raise an election dispute after the declaration of the result. Sub-sections (3) and (4) of Section 61 of the Act in clear

terms provide that any dispute relating to any election to a committee of a Society shall be referred to the Tribunal only after the date of declaration of the result of such election. Thus, the order impugned in the said writ petition was set aside and the respondents were directed to continue the election process from the stage where it was stopped. The issue raised in this writ petition is squarely covered by the ratio laid down in the said decision.

Accordingly, following the judgment dated 1.02.2006 in W.P.No.2678 of 2005, this Writ Petition is allowed, thereby setting aside the impugned memo dated 17.02.2005 as well as the consequential notice dated 18.02.2005, and directing the 6th respondent - Election Officer to proceed with the election process from the stage where it was stopped.

The writ petition is accordingly allowed. No costs.

(G. ROHINI, J.)

3rd February, 2006.

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Note:

Issue CC in one week.

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WRIT PETITION No.3946 OF 2004

3rd February, 2006.

Between:

A. Srinivas and nine others. .. Petitioners.

And

Government of Andhra Pradesh, represented

By its Secretary to Government Housing (CII)

Department, Secretariat building, Hyderabad

and seven others. 666666 .. Respondents.